

### **REMARKS**

In the Action, claims 1-3, 5-7, 9, 11-14 and 16-33 are rejected. In response, claims 1, 9, 10, 12, 17, 22, 26, 27, 28 and 31-33 are amended. Claims 5, 6, 14, 18-21 and 23 are cancelled. The pending claims in this application are claims 1-3, 7, 9, 11-13, 16, 17, 22 and 24-33, with claims 1, 10, 12, 22 and 26 being independent.

The claims are amended to obviate the objections noted on pages 2 and 3 of the Office Action. In particular, the claims are amended to clarify that the composition comprises a bioactive agent and that the bioactive agent comprises the recited plant materials.

The claims are rejected for reciting the term “holistic extract” as being indefinite. The Examiner’s attention is directed to paragraph 34 of the specification which expressly defines the “holistic extract” of the active components from the *Centipeda cunninghami* as being in substantially the same ratio as the active components that are present in the native plant material. The term “holistic” as understood by one skilled in the art refers to the extracted components being present in substantially the same ratio as in the plant material. Accordingly, the term “holistic” is defined by the specification and is not indefinite.

In view of these amendments, the claims are submitted to be in proper form.

### **Rejection of Claims 1, 4, 5, 8, 9, 11, 17 and 29**

These claims are rejected as being obvious over U.S. Patent Publication No. 2005/0158252 to Romanowski et al. The Action contends that the Declaration previously submitted is not sufficient to overcome the rejection of Romanowski et al. since the Declaration does not disclose the use of Vitamin E. However, Applicant is only required to show as much as the reference shows when the rejection is based on obviousness. Since the Declaration

demonstrates a prior invention including the claimed components, the Declaration is sufficient to overcome the rejection over Romanowski et al.

Furthermore, the claims as amended are not obvious over Romanowski et al. Romanowski et al. does not disclose an oral composition comprising a bioactive agent comprising 5.0 wt% to 15 wt% of a holistic extract of *Centipeda*, coenzyme Q10, aloe vera, folic acid, Vitamin E, gotu kola, thyme oil, and olive leaf in the recited amounts.

The claimed invention is not simply a random combination of components. Instead, the invention is directed to a specific mixture of plant materials where each plant material is combined in an amount to provide the intended result. Applicants found that each component of the composition serves a particular function and provides a specific property to the composition. More importantly, Applicants found that specification combinations of the plant materials provide enhanced functions of the plant materials. For example, the gotu kola as recited in claim 1 is provided to promote lysis of the cell wall. Thyme and olive leaf are added to provide an antiseptic and anti-bacterial effect, while the aloe vera and coenzyme Q10 are included in amounts to promote repair and healing of the periodontal tissue. The holistic extract of the *Centipeda* is included in an amount to inhibit inflammation of the tissue. Romanowski et al. does not disclose or suggest the claimed combination. Furthermore, Romanowski et al. does not disclose or suggest a holistic extract of *Centipeda* obtained by extracting the *Centipeda* with a water and alcohol mixture as claimed.

The enhanced performance of the specific combination of the plant components are exhibited by the specifically claimed combination of components. Specifically, the bio-saponin is found to function as a natural surfactant which breaks down the outer layer of cells and other waxy layers. This function of the bio-saponin enables the gotu kola to function more effectively to promote lysis of the bacteria. The bio-saponin also functions as a foaming agent in the oral

composition. The bio-saponin and the gotu kola enhance the performance of the extract of *Centipeda*, coenzyme Q10, aloe vera, folic acid and Vitamin E in a manner that is not exhibited when gotu kola and bio-saponin are not present. The art of record fails to disclose or suggest the combination of plant materials or a composition having the claimed properties, lysis of the bacteria and improved healing of the periodontal tissue.

In view of these amendments and the above comments, claim 1 is not obvious over Romanowski et al. The claims depending from claim 1 are also allowable for reciting additional features of the invention that are not disclosed or suggested in Romanowski et al. in combination with the features of claim 1. For example, Romanowski et al. does not suggest a composition comprising 5 to 15 wt% of the bioactive agent as in claim 2, the extract of *Centipeda cunninghami* as in claim 3, or the specific mixture of plant materials of claim 9 in an amount of 1% to 10% by weight based on the weight of the bioactive agent as in claim 9, either alone or in combination with the features of claim 1.

#### **Rejection of Claims 1-3, 5-7, 9, 11, 12-14, 16, 22, 25, 28 and 29**

These claims are rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Publication No. 2002/0044977 to Close in view of U.S. Patent Publication No. 2003/0198604 to Lawlor. Close is cited for disclosing an extract of *Centipeda* for use in oral compositions. Lawlor is cited for disclosing oral compositions containing clove bud oil, various vitamins and coenzyme Q10. Contrary to the suggestion in the Action, Lawlor does not disclose or suggest Vitamin E.

Close discloses an extract of *Centipeda*, but does not disclose a holistic extract of *Centipeda* as recited in claim 1. As noted above, the claimed holistic extract of *Centipeda* includes each of the components in substantially the same proportions. Close provides no

suggestion of the advantages of a holistic extract or that a holistic extract can be obtained by the process disclosed in Close.

The combination of the cited patents provides no suggestion of the combination of gotu kola and bio-saponin to enhance cell lysis as well as enhancing the function of the extract of *Centipeda*, coenzyme Q10, aloe vera, folic acid, and Vitamin E. The combination of Close and Lawlor provide no suggestion of an oral composition comprising a holistic extract of *Centipeda*, coenzyme Q10, aloe vera, folic acid, Vitamin E, gotu kola, thyme oil and olive leaf in the claimed amounts to provide an effective oral composition for inhibiting inflammation of tissue. As noted above, each of the claimed components are added in an amount to provide a specific result. For example, the gotu kola is added to promote lysis of the cell walls and the stimulate healing of the tissue. The holistic extract of *Centipeda* is included in an amount to inhibit the inflammation of the oral tissue. While Close and Lawlor disclose various components, there is no suggestion of combining the components in the claimed manner to obtain the result as recited in independent claims 1, 12 and 22. Accordingly, the independent claims and the claims depending therefrom are not obvious over the combination of Close and Lawlor.

#### **Rejection of Claims 1-7, 9, 11-17, 19, 20, 22-25 and 27-29**

The claims are rejected as being obvious over Close in view of U.S. Patent No. 6,200,550 to Masterson et al. Close is cited for the reasons in the previous rejection. Masterson et al. is cited for disclosing an oral composition containing coenzyme Q10.

As noted in the Action, Close and Masterson et al. do not disclose the use of folic acid and Vitamin E in an oral composition. Since the cited patents do not disclose these features, the rejection does not establish *prima facie* obviousness. There is no basis provided in the rejection

that it would have been obvious to add components that are not disclosed or suggested in either of the cited patents.

Furthermore, the combination of the cited patents provide no suggestion of the claimed components in the claimed amounts to provide the claimed oral composition. The cited patents provide no suggestion of the claimed amounts of a holistic extract of *Centipeda*, coenzyme Q10, aloe vera, folic acid, and Vitamin E in the claimed amounts or the addition of gotu kola, thyme oil and olive leaf as recited in claims 1, 12 and 22. Accordingly, these claims and the claims depending therefrom are not obvious over the combination of Close and Masterson et al.

#### **Rejection of Claims 1-3, 5-7, 10-14 and 16-33**

These claims are rejected as being obvious over the combination of Close in view of Harrison and U.S. Patent No. 5,741,138 to Rice et al. Close is cited as in the previous rejection for disclosing the use of an extract of *Centipeda* in an oral composition. Harrison is cited for disclosing oral compositions containing various plant extracts and other components. Rice et al. is cited for disclosing the use of green tea in an oral composition including clove oil and peppermint oil as flavors. The rejection is based on the position that it would have been obvious to combine the claimed components in the manner recited in the claims.

As discussed above, the specific combination of components is based on a careful selection of the plant materials to provide a desired result that cannot be obtained by other combinations. The combination of plant materials is not a random selection, but instead is a combination based on experimentation to provide specific properties. The specific combination of components and the specific amounts of claim 10 result in a moisturizing feel to the mouth compared to the drying or astringent feel of many common oral rinses. The moisturizing effect of the claimed composition of claim 10 is obtained only from the specifically claimed

combination and amounts of the components. This combination is based on experimentation and test results, and thus, would not have been obvious over the cited art. Altering the composition or the relative amounts will not produce a composition having the same properties or characteristics. The art of record provides no guidance on how to obtain the claimed composition.

This rejection is clearly based on hindsight. The rejection carefully selects various components from Close, Harrison and Rice et al. using Applicants' specification as a guide to attain the claimed invention. It is improper to use Applicants' specification as a guide to randomly select components from the prior patents and publications and combine them in a manner that is disclosed only in Applicants' specification. The combination of the cited patents and publications do not suggest the specifically claimed combination of components in the claimed amounts. As noted above, the various plant materials of the invention are combined in a manner to provide a specific result and to complement each of the various components. For example, the gotu kola and bio-saponin are included in amounts to promote lysis of the bacteria, while the holistic extract of *Centipeda* is included to inhibit inflammation of the oral tissue. Accordingly, the claims are not obvious over the combination of the cited patents.

Furthermore, the Action provides no basis for the position that it would have been obvious to randomly select components from Harrison and Rice et al. and combine them in the composition of Close since the cited patents provide no suggestion of a benefit in doing so. Accordingly, it would not be obvious to combine green tea as disclosed in Rice et al. with the composition of Close or the various components of Harrison with the composition of Close.

Independent claim 10 recites a composition comprising specific amounts of various components and plant materials that are combined in specifically defined amounts and ratios to achieve the effectiveness of the composition in treating oral bacteria and oral tissue. The Action

provides no basis for the position that it would be obvious to combine each of these components in the claimed amounts. Accordingly, claim 10 and the claims depending therefrom are not obvious over the combination of Close, Harrison and Rice et al. Claim 26 is directed to a method of treating periodontal infection by applying the composition defined in the same manner as in claim 10. Accordingly, claim 26 and the claims depending therefrom are not obvious over the combination of the cited references.

In view of these amendments and the above comments, the claims are submitted as being allowable over the art of record. Accordingly, reconsideration and allowance are requested.

Respectfully submitted,



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